THE SMALL CLAIMS COURT: A RECONCEPTUALIZATION OF DISPUTES AND AN EMPIRICAL INVESTIGATION

NEIL VIDMAR*

In this paper disputes are seen as varying along a dimension of admitted liability, that is, the extent to which defendants admit some obligation to plaintiffs; they may admit no liability, partial liability, or full liability. This conceptualization was used in an empirical study of a small claims court. The results paint a portrait of the court that is at variance with most of the previous literature. Consumer issues constitute a substantial portion of the court caseload. On average, defendants, including individual consumers, do well when they dispute claims. Among disputed cases, small rather than large businesses predominate. Prior literature has suggested that, in comparison to adjudication, mediation of claims produces compromise outcomes and higher rates of compliance. This research shows that mediation yields a large percentage of all-or-none results, but to the extent that there is compromise and compliance, it can be partly ascribed to admitted liability characteristics. Some data on defaulted cases are also presented.

I. THE MEANING OF DISPUTE

What is a small claims dispute all about? The answer is not a simple one. Almost a decade ago Yngvesson and Hennessey (1975) observed that though a claim may be small in monetary terms, the dispute and the issues underlying the dispute may be very complex. Sometimes there is a hidden agenda. Sometimes the small claims dispute may be a skirmishing point whose real, unarticulated cause lies

* An earlier version of this paper was presented at the annual meeting of the Law and Society Association, Denver, Colorado, June 2, 1983. The research was generously supported by a grant from the Donner Canadian Foundation. The Psychology Department of the University of Western Ontario, under the guidance of Chairman William J. McClelland, also made an important contribution. I am deeply indebted to Judge Gordon Killeen and to Roy Edgecombe and Robert Harris for their help and cooperation. Without the able assistance of Judy Short, Pat Steele, and Marion Gerull this research could not have been carried out. Craig McEwen, Eric Steele, Austin Sarat, and Judge Killeen offered helpful comments on earlier versions of the manuscript. Editor Richard Lempert's substantive critique of the manuscript was extraordinary; my debt to him must be acknowledged.

elsewhere. However, one need not pursue matters to this point to realize that the plaintiff's demand for compensation does not necessarily capture the difference between the parties. In monetary terms alone, it is clear that the plaintiff's claim does not define the dispute, for a defendant may be willing to concede that a portion of what is sought is owing. If so, an award to the plaintiff may actually confirm the defendant's version of the disputed transaction.

This article reports on an empirical study of a Canadian small claims court. It begins with the proposition that it is wrong to conceptualize small claims disputes in the all-or-nothing terms of the maximal claim and absolute denial toward which litigation constrains contesting parties. Instead, it attempts to identify the amount of money that actually turns on differences in parties' versions of what transpired, and it evaluates outcomes by the parties' relative success in convincing the court that their version of the transaction should prevail. Reconceptualizing small claims disputes in terms of actual differences between parties calls into question some of the standard conclusions about small claims courts, especially the oft-repeated proposition that plaintiffs almost always prevail (e.g., Hildebrandt *et al.*, 1982; McEwen and Maiman, 1981; Ruhnka and Weller, 1978; Sarat, 1976; Yngvesson and Hennessey, 1975).[1] We can see why this is so if we look at a hypothetical small claims court case and the dispute that gave rise to it: *Renovations, Ltd. v. Consumer.*

Jim Consumer contracted with Renovations, Ltd. to remodel an old fireplace in his home. The agreed price was $900, including materials, and the fireplace was to be completed within four weeks. It was not a big job, and Renovations sent workers to Jim's home when work was slack elsewhere. They dismantled necessary parts of the old fireplace and then disappeared for two weeks. Jim called twice to complain, and finally two men were sent to his home, but without the necessary materials, such as the damper and fire box. Jim

[1] Prior research has used two different criteria of outcome: whether the defendant wins or loses and the percent of the claim that the plaintiff receives. Most of the studies reviewed by Yngvesson and Hennessey (1975) used the former measure, leading them to conclude that "plaintiffs win at least 74% of the cases going to judgment (and frequently more) irrespective of who brings suit" (1975: 255). Similarly, McIntyre's (1979) study of a Toronto, Canada, court led her to conclude that plaintiffs "won" 80% of the time. The studies by McEwen and Maiman (1981), Ruhnka and Weller (1978), Sarat (1976), and Hildebrandt *et al.* (1982) used the more refined latter measure. While this measure showed that plaintiffs frequently did not win everything asked for, all of the studies still concluded that plaintiffs win in the vast majority of cases.

immediately called Renovations and, after being shuttled among several persons, discovered that the materials had never been ordered. In exasperation he went to a supplier and purchased his own materials, costing $200, and provided them to the workmen, who had been cooling their heels for several hours. They began work. Within the next several days the renovations were complete and to Jim's satisfaction. Ten days later Jim received a bill for $900. He immediately phoned Renovations.

> *Jim*: "What do you mean by this bill? I provided the $200 in parts and, furthermore, I refuse to pay for two men to sit around for three hours due to your negligence. $600 and not a penny more."
> *Renovations, Ltd.*: "But, Sir, our records show . . ."
> *Jim*: "I don't give a damn what your records show. I provided the materials, and I won't pay for the men to sit on their duffs."
> *Renovations, Ltd.*: "Well, Sir, we'll take you to court."
> *Jim*: "Fine. Take me to court. In the meantime I'm not giving you a penny."

The case went to trial. The plaintiff claimed $900 plus interest of 3 percent per month and requested a counsel fee. Jim appeared with his invoices for the materials that he had supplied to the workmen. The judge ruled that Jim should pay Renovations, Ltd. $600 but did not award the plaintiff interest or counsel fee. In the court procedure book it is recorded that Renovations, Ltd. was awarded a $600 judgment against Jim Consumer.

Renovations v. Consumer is not unusual. The partially contested nature of the case is typical of disputes arising out of other relationships: e.g., a former tenant insists he owes only one month's rent, not two as the landlord claims; a small businessman asserts that he received only some of the materials that the supplier claims were provided, or that the supplier's services were inadequate; A admits responsibility for an automobile accident but claims that B's repair estimates include money for problems that preexisted the accident.

The basic point of the *Renovations* case is that the dispute was over $300 and not $900. In research using the criterion of whether the plaintiff was awarded something, Renovations would be classified as the "winner" of the dispute. Even an index that takes into account the percent of the plaintiff claim awarded would classify Renovations as a partial winner since the company "won" 67 percent of what it asked for. Yet Renovations lost the dispute in two senses. First, its version of

who owed what was rejected entirely while Jim Consumer's version was accepted. Second, it gained nothing by going to court beyond what it would have gotten had it accepted Consumer's first offer.

The case also shows how the apparent results of litigation are affected by the dispute strategies of the parties. Other options were available to Consumer. For example, he could have paid the $900 that Renovations demanded and sued Renovations for the $300 that was in dispute. He would then have entered court as the plaintiff rather than the defendant, but in the interim Renovations would have had the use of the $300, and the burden of filing a claim and otherwise pursuing the dispute would have been on Consumer. Had Consumer chosen this tactic, a traditional small claims court analysis would have recorded a 100 percent victory for the plaintiff, thus being fully consistent with the conclusions of previous literature, but it would also have recorded an instance in which a consumer prevailed against a corporation.[2] Another option open to Jim Consumer was to write Renovations a check for only the $600 that was undisputed. This strategy would have placed Renovations in the position of pursuing only the disputed part of the claim. Renovations' litigation costs would have loomed larger when measured against a $300 rather than a $900 claim, and the prospect of prevailing might have appeared less promising than it did when $600 for work conceded to have been done was included in the amount sought. If Consumer had pursued this last strategy, perhaps the court case would never have developed.[3]

There are two important lessons to be learned from the *Renovations* example. The first is that standard ways of coding dispute outcomes are extremely sensitive to strategies of dispute management. If, as is probably the case, litigants are reluctant to pay admitted partial liability unless they are released from entire claims, studies that judge outcomes by whether or not the plaintiff receives any award are likely to

---

[2] Sometimes a consumer (or other alleged debtor) may be forced to pay the creditor's full claim and then sue for the amount in dispute. A common example occurs when a dispute arises over automobile repairs and the mechanic locks the car in the shop until the bill is paid. The circumstances are similar when a problem is discovered and a dispute arises only after the bill has been paid.

[3] Jim might also have written out a check for $600, and Renovations might have refused to accept it. Had this happened, the case would be coded as in the original example. In our study, described below, there were a number of instances where the plaintiff refused a part payment offered by the defendant.

report that plaintiffs almost always prevail. Studies that look at awards as a proportion of the amount sought are likely to report that plaintiffs typically win some of what they seek and to suggest that contested court cases often compromise between the two parties' positions. The second lesson is that at least two kinds of disputes appear in small claims court: those where the defendant denies all liability for the plaintiff's claim and those where the dispute actually involves only some fraction of the claim. We can label these two types as "No Liability" and "Partial Liability" disputes, respectively. This lesson is, however, incomplete, for there is also a third kind of dispute that we shall label "Full Liability."

Full liability disputes occur when a debtor concedes that a debt is owed and not only does not pay, thus forcing the creditor to file a claim, but also replies to the claim rather than defaulting. There are reasons why a person would resist paying a sum admittedly owing (Leff, 1970). In our own study we encountered several cases where the defendant told us that he was entering a defense simply as a tactic to forestall any collection action until he could declare bankruptcy. In other cases the defendant merely wanted the chance to tell the plaintiff or a judge about his or her current financial plight. In such cases not only is there no real dispute over the issue of liability, but the plaintiff usually has solid legal evidence for the claim, such as a signed contract or receipts for the delivery of the goods or service.[4] We will treat full liability cases as "pseudo" disputes[5] and not consider them further in our conceptual analysis, although we will return to them in the next section.

The main implication of the above analysis is that small claims court disputes should be defined as the difference between the plaintiff's claim and the amount of liability admitted by the defendant: Dispute = Plaintiff claim − Defendant admitted liability. In no liability cases the defendant liability term will be zero. In partial liability cases, the term

---

[4] Admitted liability of this sort is, however, difficult or impossible to detect in the formal written pleadings. Frequently, a defendant will deny all liability in the written reply to the claim even though he or she subsequently admits partial or full liability during the personal appearance in the small claims court or in private interviews such as those conducted in the present research.

[5] Eric Steele (personal communication, August 2, 1983) has accurately pointed out that in another sense full liability disputes are still disputes. They are disputes about the timing or delivery of payments. Nevertheless, characterizing them as pseudo disputes is reasonable insofar as the liability dimension is concerned.

will vary from zero. Dispute outcomes, therefore, should be measured as the amount of the award (or settlement) that the plaintiff receives minus the amount of liability conceded by the defendant divided by the amount of the dispute: Outcome = (Award − Admitted liability)/(Claim − Admitted liability). The resulting quotient, or percentage, allows us to gauge the degree to which the outcome favored the plaintiff or defendant.

The advantages of this formula are its ability to cope with the liability distinctions that we have made and its ability to place outcomes along a continuum. For no liability cases the outcome will be simply the percentage of the claim awarded to the plaintiff. It is with partial liability cases, however, that the merits of the formula become apparent. Consider *Renovations* again. Recall that Renovations claimed $900, Consumer conceded owing $600, and that the final award was $600. Putting these figures into the formula yields a quotient of 0 percent: Consumer, the defendant, won the whole dispute. If, instead, the judge had awarded Renovations $900, the quotient would be 100 percent, showing that Consumer lost the whole dispute. Had the judge awarded Renovations $750, the quotient would be 50 percent, suggesting that the dispute ended in a draw. An award of $700 would yield a quotient of 43 percent, suggesting that the defendant came out slightly better than the plaintiff, and so forth.[6]

The formula has an idiosyncracy that should be noted. If the amount of the settlement or award is *less* than the defendant's admitted liability, or if the defendant wins a counterclaim larger than any award to the plaintiff, the quotient will have a negative value. The negative quotient presents no conceptual problems. In the first instance it suggests that the plaintiff should have taken any offer to settle for the amount admittedly owing and in the latter that he or she should not have initiated the litigation at all. In short, the

---

[6] It can be argued that any outcome involving more than 0% of the dispute is a win for the plaintiff since the defendant is forced to pay more than was acknowledged as owing and the plaintiff gains by rejecting the defendant's offer and going to court. This perspective is even weightier if plaintiffs overclaim or make additional valid claims that they would have forgone if a dispute had not arisen. Our alternative perspective, taken throughout this article, is that the disputed amount (but not the total claim) is of the all-or-none type. To the extent that the outcome falls along the continuum between 0% and 100%, the outcome is intermediate, but to the extent that it is not exactly a 50% split of the disputed amount, it favors either the plaintiff or the defendant. In any event, the data reported below will allow the reader to draw conclusions from either perspective. In this study the basic conclusions are not fundamentally affected by the perspective chosen.

formula allows for the fact that plaintiffs can do worse than not win; they can go in the hole. Although the negative quotient presents no conceptual problem, it would appear to be a relatively infrequent event in the small claims court: in our sample of over two hundred cases, described below, it occurred only eight times.[7]

The formula is, however, vulnerable to the possibility that the formal claim may not accurately represent what the plaintiff believes is the deserved outcome. Plaintiffs too have disputing strategies, and sometimes they overclaim as a means of putting pressure on the defendant. An extreme case occurred in our pilot research: a plaintiff entered a $600 claim against a real estate agent involving three sconces that, in total, were worth only $75. Other plaintiffs occasionally informed us that the request for interest on the claim was simply a negotiating tactic. We made an attempt to assess overclaiming in the present study, but plaintiffs seldom admitted it, and even when they did, the amount was trivial. The sconce case was an aberration. Possibly, our attempts to assess overclaiming were inadequate, but we believe that overclaiming was a rare phenomenon in the court that we studied. Thus, we ignore overclaiming in the remainder of the article.

By focusing only on the economic aspect of disputes, our conceptualization ignores such factors as hidden agendas, spite, and other ancillary causes of disputes (see Vidmar, 1981a). It also ignores the time and money expended in the processing of the dispute as well as other costs of going to court, such as the fact that a judgment against Jim Consumer might adversely affect his credit rating. We acknowledge these limitations but believe that our formula nevertheless constitutes a substantial advance over what has gone before.[8] Perhaps its most

---

[7] In the analyses reported below we initially utilized these negative quotients in the calculations but later decided to set a negative quotient as equal to zero. The number and size of negative quotients was so small as to make only a negligible difference in the data. In some other set of data they might be of consequence, however.

[8] While the reconceptualization is innovative, it is an extension of ideas current in the literature rather than a completely new development. Trubek *et al.* (1983) have recognized the importance of the expectations of the disputing parties and in particular struggled with the problem of defendants' costs and benefits. Miller and Sarat (1981) have conceptualized a dispute as arising "when a claim is rejected in whole or in part," the "in part" qualification being an implicit recognition of the concept of partial liability. Bonn (1972), Hildebrandt *et al.* (1982), Leff (1970), and Ruhnka and Weller (1978) have also made observations that are consistent with our ideas about disputing strategies and about liability. In many places in their important article, McEwen and Maiman (1981) arrived at insights that implicitly agree with our own findings. For example, they observed that some cases resolved

important contribution is that it demands an empirical approach that takes account of both the plaintiff's and defendant's positions. This demand has guided the research to which we now turn.

II. AN EMPIRICAL ANALYSIS

A. The Middlesex County Small Claims Court

The Ontario Small Claims Court Act authorizes claims up to $1000. In cases involving claims of $500 or less, the court's decision is final; if the claim is for more than $500, an appeal is allowed. Both individual and corporate actors may use the court, and lawyers or laypersons, including collection agents, may represent the litigants.

The Middlesex County Small Claims Court is located in London, Ontario, a city of 270,000 people, and also serves the rest of the county, composed of towns and rural areas with an additional 65,000 persons. Five regular County Court judges preside over the court on a rotating basis, and a number of part-time deputy judges also serve on the bench. Between 6000 and 8000 claims are filed in the court each year.

Beginning in 1978 a pre-trial "resolution hearing" was introduced in the court on an experimental basis. The hearing comports with McEwen and Maiman's (1984; cf. Thibaut and Walker, 1975) definition of mediation in that the third party has no power to impose a solution on the parties. Its primary purpose is to reduce case backlog. In this, it appeared to be so successful that resolution hearings were quickly instituted in a number of other urban centers in Ontario. Resolution hearings are scheduled for almost all disputed small claims cases.[9] An attempt is made to hold the hearing within three or four weeks of the defendant's reply to the claim, though this goal is, for various reasons, often not met. Attendance at the hearing is not mandatory, but there are strong informal pressures that foster attendance. For example, in a practice directive written by the Senior County Court Judge, the County Bar was informed that the hearing would be standard procedure; and all parties, whether represented by lawyers or not, are notified that a resolution hearing has been scheduled for their case at a particular time. If one or both parties fail to appear at the

---

in mediation involved instances where the defendant admitted the debt but pleaded inability to pay (1981: 250), thus acknowledging what we call "pseudo" disputes.

[9] There are some minor exceptions: e.g., the inconvenience to a party who resides outside of Middlesex County.

hearing, the case can be immediately placed on the trial docket, though frequently an attempt is made to reschedule the hearing. The referees who preside at these hearings are not lawyers, but they have always had work experience in the small claims court system; they have frequently taken some law courses, and they have received some training for their position. Interviews with referees and actual observations of the hearing sessions across a number of Ontario jurisdictions show that though personal styles differ somewhat, they operate in essentially the same way. The various courts' own statistics suggest that settlement rates are similar across the province: 50 percent to 60 percent.

Resolution hearings are scheduled for thirty minutes each, and they seldom exceed the time allotted. Hearings take place in an informal and private setting. Usually, the plaintiff is asked to summarize his or her claim and the defendant is asked to reply before the referee begins to ask questions. The referee's principal functions are to explore the factual and legal issues in the dispute and to make suggestions about a settlement. The referee has no power to force a settlement. Like most small claims mediation (see McEwen and Maiman, 1981; 1984), the process cannot be described as "deep" mediation since few attempts are made at conciliation or at the exploration of non-legal issues that might underlie the dispute. The hearings stay close to the law and the logic of the factual positions. Indeed, attempts by either party to stray beyond the legal case at hand are usually cut short. There is frequent discussion of how the case will probably be decided at trial. The hearings are not, however, totally legalistic. The referee may attempt to cajole the parties to "split the difference and avoid spending a day in court waiting for trial" or suggest that the dispute is a "silly dispute between two old friends and you ought to compromise." Nevertheless, as much as 75 percent of the referee's time is spent in fact-finding and making suggestions about settlement rather than encouraging dialogue between the parties.

If the parties reach a settlement, it is usually endorsed by a judge so that it has the same legal standing as a trial judgment. If the parties cannot agree, the case is scheduled for trial. Very frequently, one or both of the parties will not settle in the hearing but request a few days to "think it over" before the case is placed on the trial docket. Many of these cases are subsequently settled in accordance with what was suggested in the hearing.

B. Data and Methodology

The primary data upon which our analyses in this article are based consist of 203 randomly selected cases from the Middlesex County Small Claims Court. All were "disputed" cases in the sense that the party served with a claim entered a formal written reply to the claim, and a resolution hearing was scheduled by the court. The cases entered the resolution hearing stage between September 1, 1981, and April 30, 1982. We attempted to conduct interviews with both plaintiff and defendant before the hearing. We observed and took notes at each hearing and each trial, if the case went to trial. Finally, we attempted to conduct follow-up interviews with the plaintiff and defendant between four and six weeks after the case was settled or adjudicated. Interviews with one or both parties were obtained in 86 percent of the cases. We interviewed 70 percent of the plaintiffs and 52 percent of the defendants.

A second source of data involved examination of the archival records of the court for all cases, totaling 2079, filed between January 1, 1980, and April 30, 1980. These data were coded in a detailed, systematic fashion. In addition to confirming that the above sample of disputed cases is representative of disputed cases in the court, they also allow us to make some comparisons between disputed and defaulted cases.

The interviews in the primary sample utilized structured questions, but some allowed open-ended answers while others involved rating scales. Most were conducted in person, though some were conducted by telephone when respondents indicated that was the only way that they would consent to be interviewed. Interviews lasted from fifteen minutes to more than one and one-half hours. Both the pre and the post interviews ranged broadly over topics relating to the nature of the dispute, perceptions of the court system, and expected and obtained outcomes.

For purposes of this article we need only be concerned with certain portions of the pre interviews, specifically, those addressed to the nature of the dispute and issue of liability. We classified the type of dispute as landlord/tenant, employer/employee, business/consumer, financial institution/debtor, or individual/individual. The primary nature of the claim was classified according to one of seven categories: a product or service debt, a financial debt, faulty product or service, failure of a role obligation, a tort, unfair business practice, or "other." The primary nature of the defendant's denial of the claim was

classified according to one of six categories: claim against the wrong party, the amount or arrangements disputed, defendant is not at fault, the problem is the plaintiff's fault, a third party is responsible, or "other."

By asking whether the defendant admitted that some money was owed the plaintiff, we were able to classify disputes from the defendant's perspective as no liability, partial liability, or full liability (pseudo) disputes. This information also allowed us to determine the actual amount in dispute according to our reconceptualized dispute formula. In instances where pre interviews with the parties were not obtained, the observations of the resolution hearings themselves usually yielded sufficient data to complete the dispute index. For example, at the hearings defendants usually made clear what position they held regarding the question of no, partial, or full liability. If defendants admitted partial liability, they usually indicated the amount that they felt was owed.

The follow-up interviews plus our observations of the hearings and trial, supplemented by the court records, allowed us to determine outcomes and assess compliance rates.

Between-rater reliability checks of the coding of these various measures yielded agreement rates of between 82 and 96 percent. To the extent that there is unreliability in the coding process, it introduces random error that should work against finding consistent and predicted differences among variables.

C. Claims and Legal Cases

First consider the archival data. There were 2079 cases drawn from the court records. A case constituted a claim made by a plaintiff against a defendant. Of this total number 16 percent never got beyond the initial claim. In almost all of these cases the defendant was never served with the claim because he or she could not be found. In a few the court discovered that the claim was not collectible because the defendant was bankrupt or deceased. In another 9 percent of the cases the plaintiff withdrew the claim before a default or dispute was recorded by the court. Sarat (1976) observed that the filing of a claim may serve to initiate settlement activity or facilitate ongoing settlement attempts. We have little additional data on these cases. Either some sort of settlement was reached or the plaintiff had second thoughts and abandoned the claim. Thus, of the total number of claims filed in the four-month period, 25 percent (16 percent + 9 percent) never became formal legal cases. Of the remainder, 1126 cases,

or 54 percent of the total, resulted in default judgments and 433 cases, or 21 percent of the total, were contested. Thus, of the actual formal legal cases, defaults were about two and one-half times more likely to occur than disputes.

D. Comparing Defaulted and Disputed Cases

Table 1 compares the defaulted cases with the disputed cases from the court records and the sample of disputed cases that were used for our interviews and observations. The amount of the claim (Variable A) for defaulted cases is somewhat less than for disputed cases, but the differences are not statistically significant; for both types the modal claim is $1000, the maximum allowed in the court.

The table does, however, reveal some interesting associations. First, the relationship between the parties (Variable B) is related to the likelihood of a dispute. Business/Consumer issues accounted for 61 percent of defaulted cases and 33 percent of disputed cases. Moreover, in defaulted cases

Table 1. Comparison of Defaulted and Disputed Cases: Archival Data and Interview Sample

Variable	Case Type		
	Default (Archival) (N = 1126)	Dispute (Archival) (N = 433)	Dispute (Interview) (N = 203)
A. Claim Amount			
Mean	$ 383	$ 533	$ 551
Median	$ 279	$ 471	$ 525
Mode	$1000	$1000	$1000
B. Relationship/Plaintiff			
Business v. Consumer	60%	22%	21%
Consumer v. Business	1%	11%	12%
Landlord v. Tenant	6%	19%	14%
Tenant v. Landlord	0%	3%	5%
Employer v. Employee	0%	0%	2%
Employee v. Employer	0%	1%	2%
Financial Inst. v. Debtor	15%	5%	2%
Debtor v. Financial Inst.	0%	0%	0%
Business v. Business	16%	27%	28%
Individual v. Individual	2%	12%	14%
	100%	100%	100%
C. Assistance: Lawyer or Collection Agent			
Plaintiff has agent	57%	59%	51%
Defendant has agent	1%	39%	40%
Plaintiff's agent is collection agent	41%	11%	8%
D. Type of Plaintiff			
Individual	3%	26%	36%
Individual as business (c.o.b.)	13%	17%	17%
Business	84%	56%	47%
	100%	99%	100%

the plaintiff was almost invariably the business, whereas in disputed cases the consumer was likely to be the plaintiff about one-third of the time. Defaulted cases were also more likely than disputed cases to involve a financial institution acting against a debtor, but less likely to involve businesses against businesses or individuals against individuals. Plaintiffs had an agent, usually either a lawyer or a collection agency (Variable C), over 50 percent of the time, whether or not the case was disputed. Defendants, on the other hand, had an agent in about 40 percent of the disputed cases but in fewer than 1 percent of the cases that were defaulted. In 41 percent of the defaulted cases, the plaintiff's agent was a collection agency.[10] In disputed cases, by contrast, plaintiffs were represented by collection agencies only about 11 percent of the time.

Variable	Case Type		
	Default (Archival) (N = 1126)	Dispute (Archival) (N = 433)	Dispute (Interview) (N = 203)
E. Type of Defendant			
Individual	83%	56%	51%
Individual as business (c.o.b.)	6%	18%	20%
Business	11%	26%	28%
	100%	100%	99%
F. Business Size			
Business Plaintiffs: Median	—	—	5.6
Mode	—	—	4.0
Business Defendants: Median	—	—	4.6
Mode	—	—	4.0
G. Single Type Claim	99.5%	90%	89%
H. Type of Claim			
Product or service debt	82%	66%	59%
Monetary debt	16%	6%	4%
Faulty product or service	1%	13%	9%
Role obligation failure	1%	5%	15%
Tort (property or person)	3%	23%	12%
Unfair business practice	0%	0%	1%
Other	1%	4%	1%
I. Payment of Monies Owing (after 1 year)			
Total amount paid	11%	51%	—
Partial amount paid	34%	13%	—
Nothing paid	55%	36%	—
	100%	100%	
J. Median Percentage Paid of Monies Owing, if Payment Made	9%	84%	—

[10] In most of the cases in the court the collection agency sues as an agent of the party with a claim rather than by assignment of the debt to the collection agency.

Variables D and E compare defaulted and disputed cases according to whether the plaintiff was an individual, an individual "carrying on a business" (c.o.b.), or a business. A common finding of small claims court studies is that businesses predominate as plaintiffs (see Ruhnka and Weller, 1978; Yngvesson and Hennessey, 1975). Often this finding is taken as evidence that small claims courts have departed from the mission of providing justice to those who otherwise could not afford it and have instead become a tool of large corporate interests. However, as Yngvesson and Hennessey (1975) note, these conclusions must be qualified if many of the business plaintiffs are small businesses rather than large ones. Looking only at defaulted cases, we see what is apparently a pattern of large business dominance. The vast majority of these cases are brought by businesses against individuals, and c.o.b. cases, which we may assume involve small businesses, account for only 13 percent of the total business plaintiff cases. When we look at disputed cases, however, the picture is somewhat different. Plaintiffs are more likely to be individuals and defendants are more likely to be businesses. If we aggregate individuals and individuals c.o.b., we see that "little guys" constitute almost half of the plaintiffs in disputed cases. Business size can also be explored through data obtained from the interview sample. Each business plaintiff and defendant interviewed was asked how many employees the business had. This information is presented as Variable F. The finding is striking. For plaintiffs the median organizational size was 5.6 members and the mode was 4. For defendants the median size was 4.6 and the mode was 4.

Thus, like previous studies we find that the most common configuration in the court involves business plaintiffs suing individuals. This fact, however, does not lead us to the conclusion that large corporate entities are using the court to pursue individuals who have arguably defensible positions and who are intimidated and outgunned by their powerful adversaries. Instead, it appears that the business of the small claims court can be divided into two types of cases. The first, and by far the larger proportion, involves plaintiffs, often large businesses, seeking to legally perfect claims against individuals who do not bother to show up and defend themselves. The second involves truly contested cases which as often as not involve ordinary citizens, either as individuals or small businesses, suing each other or suing large corporations. Since, as we will see when we turn to Variables I and J, the payment

of judgments is much more likely in contested cases than in defaulted cases, the dominance of defaulted cases on the docket and the probable dominance of large businesses among default plaintiffs do not mean that the primary effect of the accessibility of the small claims court is to transfer money from individuals to large businesses.

It is also possible to compare defaulted and disputed cases according to the kind of claim that the plaintiff makes: a debt for a product or service, a monetary debt, compensation for a faulty product or service, a failure of a role obligation, a tort, an unfair business practice, or "other." When so classified, about 90 percent of the disputed cases and virtually all (99.5 percent) of the defaulted cases involved only a single type of claim (Variable G). Variable H shows that in defaulted cases, as opposed to disputed cases, there is a much higher incidence of claims for product, service, and monetary debts. This finding caused us to examine the written statements of the claim more closely. We found that in a high proportion of the default cases, the plaintiff claimed to have solid evidence of the defendant's liability, such as a signed contract: e.g., "Mr. Smith took out a $900 loan and paid back $150, but no further payments have been forthcoming"; "She purchased a TV set on installment last January, was consistently tardy in her monthly payments, and stopped paying altogether in August"; "They were four months in arrears on their utility payments and then they moved out of the apartment." There were similar types in the sample of disputed cases, but they were far less common. Moreover, in our interview sample of disputed cases, such claims usually ended in the defendant conceding liability; that is, they involved "pseudo" disputes.

These findings suggest an interesting hypothesis about defaulted cases. Some critics of the small claims court (see Yngvesson and Hennessey, 1975, for references) have speculated that individuals faced with a claim by a large organization are intimidated and default despite possible legal defenses. An alternative interpretation is that defaulted disputes involve cases where the defendant's legal liability for the claim is clear and unequivocal, but the defendant cannot or will not pay (see, e.g., Bonn, 1972; Hildebrandt *et al.*, 1982; Leff, 1970). Each hypothesis, of course, could explain a certain proportion of defaulted cases; the issue is the size of the proportion. Our findings are far from dispositive on this issue, but they are consistent with the possibility that the majority of defaulted cases are of the clear and unequivocal type. In

addition to the evidence from the claims, this possibility is supported by the types of business organizations that are involved as plaintiffs in defaulted cases and the frequency with which collection agencies bring cases. Banks, department stores, and utility companies are likely to have signed statements of financial obligations on the part of the defendant, and collection agents are hesitant—on economic grounds—to pursue claims where the defendant's liability is not clear.[11]

A final comparison between defaulted and disputed cases can be made with respect to payment of monies owing. The court records have many gaps with respect to payment. Money that is owing may be paid without either the plaintiff or the defendant notifying the court that the account has been settled. Parties to whom money is owed may take no action to collect. However, any formal activity such as payments into court, whether voluntary or through wage garnishment, will be noted. Attempts to utilize legal mechanisms to collect, which nevertheless fail, are also recorded. Some parties also notify the court that the debt has been paid directly. From the archival records we were able to obtain data on 60 percent of the defaulted and 52 percent of the disputed cases. Our data, therefore, involve only this subset of cases.[12] We followed payment histories for one year after the default or settlement or judgment. As shown in Table 1 (Variable I), in only 11 percent of the defaulted cases was the total amount of the judgment owing paid. In an additional 34 percent of the cases there was partial payment. In disputed cases the total amount was paid 51 percent of the time, and less than full payment was made in an additional 13 percent of the cases. From a somewhat different perspective (Variable J), the data show that if money was paid at the end of one year, the median payment as a percentage of money owing was 9 percent in defaulted cases and 84 percent in disputed cases. These data must be treated cautiously because many cases lack payment information and in other cases all payments may not be recorded. Nevertheless, they suggest that payment prospects are low in defaulted cases but considerably higher in disputed

---

[11] We interviewed five collection agents as part of our research. They told us that most of their claims involve clear contractual obligation and said that economic incentives led them to pursue only clear claims. They did admit, however, that sometimes they are forced to undertake questionable cases to nurture or preserve a relationship with a regular client.

[12] No data are presented here on the sample of interview cases because the cutoff period was different. Payment data on the interview sample are presented below.

ones. It is quite likely that many defaults arise because defendants either plan to leave the jurisdiction or are so impecunious as to know that they are judgment proof.

E. Disputed Cases: Consumers and Individuals in the Court

One of the most consistent conclusions about the small claims court has been that consumer claims constitute only a small fraction of its cases (e.g., Hildebrandt *et al.*, 1982; Yngvesson and Hennessey, 1975). Sometimes authors have not adequately distinguished between disputed and defaulted cases in drawing the conclusion (e.g., Hildebrandt *et al.*, 1982), but it appears that similar results have been reported when only disputed cases were under consideration. Ruhnka and Weller (1978), for example, limited most of their analyses to disputed cases (see 1978: 56) and nevertheless report few consumer cases in the fifteen courts that they studied. However, these findings reflect a decision to code as "consumer cases" only those brought by consumers as plaintiffs. By focusing on the plaintiff, researchers miss cases that turn on issues of consumer rights (Ruhnka and Weller, 1978: 78). They ignore the fact that in asserting their rights consumers are often in the position of withholding payment from a provider of goods or services and consequently appear in court as defendants rather than plaintiffs. Decisions for defendants in such cases are properly classified as consumer victories. Thus, the incidence of consumer cases in small claims courts can only be spotted and the likelihood of consumer victories can only be measured if cases are classified according to the nature of the underlying dispute.

Aggregating the disputed cases in our interview sample, we find, as is reported in Table 1, that consumer issues were at the heart of 33 percent of all disputed cases (21 percent involving businesses versus consumers and 12 percent involving consumers versus businesses). Other individual versus business disputes (i.e., landlord/tenant, employer/employee, financial institution/debtor) accounted for an additional 25 percent of the cases.

The fundamental similarity between many of these disputed cases in which businesses were plaintiffs suing individuals and many of the cases in which individuals were plaintiffs suing businesses is best conveyed by the flavor of the

cases we observed.[13] Consider some cases where the consumer was the defendant. A service station claimed for car repairs; the defendant argued that she had been overcharged on labor. A real estate firm claimed for a brokerage fee, but the consumer said the plaintiff had failed to provide the service. A dentist sued over an unpaid balance of a bill, but the defendant asserted that he had been charged too much and the dentist had completed unauthorized work on his wife's teeth. A store owner claimed the balance of an account (amounting to 3 percent of the total) for custom-made drapes, but the defendant asserted that the owner had told her she need not pay the balance. A tile company sued for an unpaid account, but the defendant asserted that the work was inferior and that, in addition, the final account exceeded the original estimate. A claim over the purchase and installation of stereo components was met with the reply that not all the equipment had been received.

Next, consider cases where the consumer was plaintiff. A consumer had a new roof installed and paid upon completion, but when it rained the roof leaked; the roofer asserted that the water damage had occurred before repairs were made. A consumer claimed a dry cleaner lost several articles of clothing, but the defendant asserted that some articles had been picked up and others were not on the invoice. The plaintiff's boat was destroyed when wind blew down the defendant bailee's shed; the defendant asserted that the contract on storage excluded liability for "Acts of God." A plaintiff's drapes were returned stained and shredded, but the defendant asserted that the drapes were already stained and in any event not worth what the plaintiff was claiming. Plaintiff claimed an "unfair business practice" when oak bookshelves turned out to be veneer; the defendant asserted that the plaintiff was fully aware of the veneer because of the low price.

In short, the underlying nature of the disputes was similar. The only difference was that in cases in which consumers were plaintiffs the problem usually arose *after* everything due had been paid. In cases in which consumers were defendants, the problem was usually discovered *before* the consumer had paid the full amount due. Withholding payment, including money admittedly owed, was, we learned in our interviews, almost always a deliberate strategy: as one consumer defendant remarked, "I owe him something, but why should I pay him

[13] Recall that disputed cases were different from default judgments in that the latter were often "open and shut."

anything if he is going to be so unreasonable about the bill? Let him sue me; we'll let the judge decide." As this defendant realized, withholding payment is often the consumer's most powerful weapon. The result, however, is that the consumer enters court as a defendant.

F. Who Wins Disputed Cases?

The small claims court literature routinely reports that plaintiffs win the vast majority of disputed cases (see, e.g., Hildebrandt *et al.*, 1982; McEwen and Maiman, 1981; Ruhnka and Weller, 1978; Sarat, 1976; Yngvesson and Hennessey, 1975).[14] However, these studies treat plaintiffs who win anything or who are awarded some specified percentage of the claimed amount as victorious. For the reasons we note in Section I, neither criterion is appropriate. Dispute outcomes are better measured by the proportion the plaintiff receives of the amount that is actually in dispute.

The defendant denied any liability in 104 of the 203 cases in our interview sample. Partial liability was admitted in 81 cases, full liability was admitted in 17, and 1 case could not be categorized because of incomplete data. The full liability cases will be excluded from our analysis of dispute outcomes because they are "pseudo" disputes in which the plaintiff is conceded to have won from the start.[15] Thus, the working sample for the analysis of outcomes is composed of 185 cases: 104 no liability and 81 partial liability disputes. Outcomes were calculated according to the formula presented in Section I; amount of the award minus the admitted liability is divided by the amount actually in dispute.

Table 2 presents the relevant data. In this table no distinctions are made between no liability and partial liability

---

[14] Authors drawing this conclusion often attempt to explain *why* plaintiffs win, or conversely, why defendants lose. Yngvesson and Hennessey (1975: 243-54) considered four hypotheses: defendants are confronting a more experienced plaintiff; they are confronting a plaintiff who is represented by counsel; they are not given time to explain their cases fully; they fail because they are defendants (e.g., they are less committed to the case than plaintiffs, or the judge places a higher burden of proof on the defendant). Ruhnka and Weller (1978: 56-79) considered such factors as differential education and income, race, the availability of legal representation, strength of evidence, and burdens of proof. Sarat (1976: 366-69) considered differences in prior experience and legal representation.

[15] Pseudo disputes are not excluded in the samples of cases studied by previous authors. To the extent that such cases exist, the statistics on plaintiff victories in previous studies of disputed cases are inflated by cases that did not involve true disputes.

Table 2. Percentage of the Amount Actually in Dispute Awarded to Plaintiff

I.	All Disputed Cases (N = 185)	
	A. Mean percentage awarded	41%
	B. Median percentage awarded	43%
	C. Percentage of dispute	
	0%	37%
	1 - 25%	12%
	26 - 50%	10%
	51 - 75%	10%
	76 - 99%	4%
	100%	27%
		100%
II.	Mean Dispute Outcome as a Function of Type of Case and of Plaintiff	
	A.1 Consumer as plaintiff (N = 21)	39%
	A.2 Business as plaintiff (N = 35)	39%
	B.1 Tenant as plaintiff (N = 8)	43%
	B.2 Landlord as plaintiff (N = 29)	41%
	C.1 Employee as plaintiff (N = 5)	34%
	C.2 Employer as plaintiff (N = 3)	33%
	D.1 Debtor as plaintiff (N = 0)	-
	D.2 Financial institution as plaintiff (N = 2)	24%
	E. Business plaintiff versus business defendant (N = 58)	49%
	F. Individual plaintiff versus individual defendant (N = 24)	43%

cases or between cases that are settled and those that are adjudicated. The table is divided into two parts. Part I presents data on dispute outcomes for the total sample of cases.[16] Row IA shows that on average the plaintiff received 41 percent of the difference between what the plaintiff claimed and what the defendant admitted owing. Row IB shows that the median amount was 43 percent. We see from Row IC that the plaintiff won none of the disputed amount in 37 percent of the cases and everything 27 percent of the time. Thus, if we take the law's classic binary perspective and focus only on that portion of the claim actually in dispute, defendants are somewhat more likely than plaintiffs to prevail completely. Looking at the data a little differently, in 49 percent of the cases the plaintiff received less than one-fourth of the amount in dispute, in 31 percent the plaintiff received three-fourths or more, and in the remaining 20 percent of cases the dispute outcome was somewhere in the middle.

Part II of Table 2 disaggregates the data on mean outcome according to the type of dispute and the identity of the plaintiff.

[16] In calculating these figures, we recorded the cases where defendants won counterclaims as a 0% award for the plaintiff. Of the 185 cases in the sample, 27 involved counterclaims. Of these the defendant was successful in 8, but 3 of the 8 also involved wins by the plaintiff; that is, plaintiff and defendant received offsetting awards. Of the remaining 5 cases, the mean award was 45% of the counterclaim and the median was 26%.

Numbers are small in some categories, but the overall message is plain. Not only do defendants do well on the average, something that was obvious from Part I, but success rates in different types of cases are largely independent of the character of the parties. Individuals suing businesses do as well as businesses suing individuals. Tenants suing landlords do as well as landlords suing tenants, and so on.

These findings appear to be totally at variance with the previous literature—on average defendants do well! In fact, if we consider an outcome where the plaintiff receives less than half the amount in dispute as a win for the defendant, defendants win more often than plaintiffs.[17] The table also shows that consumers and other individuals involved in disputes with a business are not disadvantaged by appearing in court as defendants.[18] Both of these conclusions are underscored by some additional analyses. Prior literature has suggested that businesses are more likely than individuals to have legal assistance and to be "repeat players," and that both of these characteristics are positively associated with winning (see Galanter, 1974; Hildebrandt *et al.*, 1982; Sarat, 1976). Our data did show that businesses are more likely to be represented by counsel and more likely to be repeat players. However, there was no association between these two factors and dispute outcomes.

G. Explaining Settlement

There are four stages during the dispute resolution process when a case can be resolved: it can be settled before the hearing takes place, at the hearing, after the hearing, or at trial. Table 3 shows the percentage of cases resolved at each

---

[17] If plaintiffs sometimes ask for more than they think they are entitled to, the appropriate conclusion may be that plaintiffs and defendants do about equally well in small claims courts (see note 6 above). However, the data on all-or-nothing cases suggest that defendants actually tend to prevail.

[18] This statement assumes that the cases of businesses and consumers are equal on other grounds, such as strength of evidence and the litigants' preparation and commitment. Richard Lempert (personal communication) has suggested that there could be a differential selection of cases:

> For example, assume that businesses, regarding the courts as essentially "in their service," sue everyone who owes them money with little prior case screening while individuals, afraid of going to court, only bring suit when they are subjectively sure of victory. With such selection processes, one could have equal success for both business and consumer plaintiffs but there would in fact be a tremendous bias in favor of business plaintiffs because their cases were weaker.

Thus, we can only conclude that given the cases that appear in the court, consumers do not appear at a disadvantage.

stage disaggregated by type of admitted liability, including full liability cases. The most striking finding from these data is that almost half (49 percent) of the no liability cases proceeded to trial, whereas only slightly more than one-fourth (26 percent) of the partial liability cases did so. Fully 38 percent of the partial liability cases were settled at the hearing, but only 11 percent of no liability cases were settled there. Only one of the pseudo disputes went to trial (for technical reasons of no particular importance here), whereas the remainder were settled beforehand. This tends to confirm our judgment that cases involving full liability are not true disputes.

Table 3. Dispute Resolution Setting as a Function of Admitted Liability

Resolution Setting	Liability Admission		
	No Liability N = 104	Partial Liability N = 81	Full Liability (Pseudo Dispute) N = 17
Before Hearing	12%	10%	35%
At Hearing	11%	38%	53%
After Hearing	29%	26%	6%
At Trial	49%	26%	6%
	100%	100%	100%

$X^2 = 84.69$, $df 6$, $p < .001$

Additional comparisons were made among the types of admitted liability in order to determine if this parameter was related to any other dispute characteristics. The average claim in no and partial liability cases was approximately the same ($572 and $562, respectively) and somewhat higher than in pseudo disputes ($424). The modal claim was the maximum $1000 for all three types. Admitted liability was also unrelated to the type of dispute (i.e., consumer disputes, landlord/tenant, business disputes, etc.). The quality of the defendant's response was associated with admitted liability, as was the likelihood that the defendant, but not the plaintiff, would have counsel. In no liability disputes the defendant was likely to fault the plaintiff or claim that the plaintiff had the wrong party, while in partial liability and full liability cases the defense was likely to revolve around the amount or arrangement of monies owing. Either as a result or as a cause of the chosen defense, 48 percent of the defendants in no liability cases had lawyers, compared to 32 percent of defendants in partial liability cases and 18 percent of defendants in full liability cases. Our

interviews and observations lead us to believe that it was usually the nature of the legal dispute that led to the retention of counsel rather than vice versa. No liability disputes were more likely to involve interpretations of legal obligation and thereby cause the defendant to seek legal advice. Furthermore, when lawyers were involved in partial liability cases, they frequently admitted that their client owed something.

The richness of our interview data led us to believe that we might be able to identify social structural (e.g., McEwen and Maiman, 1981; Sarat, 1976) or social psychological variables (e.g., Aubert, 1967; Coates and Penrod, 1981; Vidmar, 1981a; 1981b) apart from the degree of admitted liability that contributed to the probability of settlement. However, the mode of disposition—adjudication or settlement—was not significantly associated with such structural variables as whether the parties had a past relationship, the length of any relationship, the number of problems in the relationship, whether the parties expected to interact in the future, the presence or absence of lawyers, prior small claims court experience, or the number of settlement attempts in the current dispute. The mode of disposition was also not predictable from such social psychological variables as the parties' subjective views of the strength of their case, the parties' expectation that the case could be settled without a trial, the extent to which the parties perceived the dispute as an all-or-none affair, or the parties' beliefs that the legal system was fair. One social psychological variable that was related to the mode of disposition was the extent to which an opposing party was perceived as unreasonable.[19] For both plaintiffs and defendants, the more the opponent was perceived as unreasonable, the less likely a settlement in the case. Perceptions of unreasonableness were not related to whether the case involved no liability or partial liability, but seemed to tap an independent emotional component that either affects a party's willingness to settle or reflects the actual intransigency of the opposing party. The correlations were not large (r = .23, p .0l, and r = .2l, p .05, respectively for plaintiffs and defendants), but they may help to explain why some partial liability as well as no liability cases go to trial: the parties are, or at least perceive each other as, unreasonable and

[19] This was measured by a question toward the end of the initial interview that asked: "How reasonable do you think that —— has been in this matter? Would you say that he/she has been very reasonable, somewhat reasonable, somewhat unreasonable, or very unreasonable?"

intransigent. In these circumstances the mediation attempts of the referee are unlikely to succeed.

In summary, cases that were settled differed from cases that proceeded to adjudication on the dimension of admitted liability. Almost half of the no liability cases went to trial, whereas only about one-fourth of the partial liability cases and only one of the full liability cases did so. The type of admitted liability was a major predictor of settlement. It was also the case that when the parties perceived their opponents as being unreasonable prior to the resolution hearing, the likelihood that the case would be settled was somewhat diminished.

H. Dispute Outcomes as a Function of Settlement versus Adjudication

It has been suggested (see, e.g., Aubert, 1967; McEwen and Maiman, 1981; 1984) that mediated cases are more likely than adjudicated cases to result in intermediate outcomes, and adjudicated cases are more likely than mediated cases to result in all-or-none outcomes. The theoretical basis for this suggestion is that while adjudication places decisional power for outcomes in the hands of judges who rely on normative, all-or-none rules in rendering judgments, mediated outcomes require the consent of both disputing parties, a natural consequence of which is compromise from their original positions. McEwen and Maiman's (1981) study claimed empirical support for this prediction. Measuring outcomes by the proportion of the initial claim awarded to the plaintiff, McEwen and Maiman found that mediated cases had more intermediate outcomes than adjudicated ones. Their conclusion assumes that all awards for less than 100 percent of the plaintiff's claim are properly classified as intermediate and that successfully mediated cases are similar to adjudicated cases on all important dimensions. This article calls both of these assumptions into question. First, we have argued that outcomes should be measured by the proportion of the disputed amount that the plaintiff receives. Second, it appears that cases that are successfully settled are more likely than adjudicated cases to involve a full or partial admission of liability. It is possible, therefore, that the purported association between mediation and compromise judgments may instead be explained by differences in admitted liability characteristics. This possibility can be examined with our present data sample.

Table 4. Case Outcomes as a Function of Resolution Setting

Resolution Setting and Amount Plaintiff Receives	Outcome		
	Percent of Total Claim	Percent of Dispute	
		No Liability Cases	Partial Liability Cases
A. Settled Before Hearing			
0%	11%	91%	43%
1-25%	3%	0%	0%
26-50%	43%	0%	14%
51-75%	0%	0%	0%
76-99%	0%	0%	0%
100%	43%	9%	43%
	100% (N=23)	100% (N=15)	100% (N=8)
B. Settled in Hearing			
0%	12%	33%	17%
1-25%	11%	8%	31%
26-50%	20%	25%	17%
51-75%	20%	0%	17%
76-99%	22%	8%	7%
100%	15%	25%	10%
	100% (N=41)	99% (N=12)	99% (N=29)
C. Settled After Hearing			
0%	20%	67%	29%
1-25%	30%	0%	19%
26-50%	8%	4%	14%
51-75%	21%	11%	19%
76-99%	2%	4%	0%
100%	19%	15%	19%
	100% (N=48)	101% (N=27)	100% (N=21)
D. Adjudicated at Trial			
0%	27%	40%	17%
1-25%	2%	4%	9%
26-50%	3%	6%	4%
51-75%	15%	6%	14%
76-99%	11%	6%	4%
100%	42%	38%	52%
	100% (N=73)	100% (N=50)	100% (N=23)

Table 4 describes outcomes as a function of where the case was resolved. The first column of Table 4 measures outcomes by the proportion of the initial claim awarded to the plaintiff. It does not distinguish between types of admitted liability. From this perspective, the hypothesis that settled cases are more likely than adjudicated cases to have intermediate, or compromise, outcomes once again appears strongly supported. For example, 40 percent of the cases settled in the hearing involved awards ranging from one-fourth to three-fourths of the claim. Twenty-nine percent of those cases settled after the

hearing fell in this intermediate range. However, only 18 percent of adjudicated cases had such intermediate outcomes.

Columns 2 and 3 present a different picture. Here the data are based on the conceptually appropriate outcome criterion: the proportion of the amount in dispute awarded to the plaintiff. No liability and partial liability cases are disaggregated. For the cases settled before the hearing, the outcomes for both no liability and partial liability cases were predominantly all-or-none. This was usually because one of the parties brought forth solid evidence relating to the dispute: e.g., the account had been paid; the plaintiff sued the wrong party; the defendant had received the goods but failed to keep adequate records. Certain patterns are apparent from looking only at results that might be ascribed to the efforts of a referee or judge, i.e., those settled in or after the hearing, or ultimately adjudicated at trial. First, we see that intermediate outcomes in settled cases are most likely where partial liability is admitted. No liability cases tended to be all-or-none. Fully 58 percent of the no liability cases settled in the hearing gave everything in dispute to either the defendant or the plaintiff, and 82 percent of the cases settled after the hearing did so. Even when they were settled, no liability cases were not characterized by compromise: one of the parties tended to give up on the claim. The one puzzle here is that no liability cases settled at the hearing were more likely than partial liability cases to result in a 100 percent judgment for one of the parties. One would have thought that no liability litigants would be particularly resistant to surrendering everything sought. It is possible that this finding is an artifact of the small number of cases in this category, but it may also be that one of the parties learns at the hearing that the argument on which everything is based is untenable and so agrees to give up everything. Partial liability cases tended more toward intermediate outcomes, with only 27 percent and 48 percent of settlements in the hearing and after the hearing, respectively, showing all-or-none outcomes. Admitted liability also appears to have affected adjudicated decisions, although the effects were not as strong. When measured by the amount in dispute, 78 percent of all no liability cases involved all-or-none outcomes, compared to 69 percent of partial liability cases.

The systematic observations of the resolution hearings add some detail to these figures. In no liability cases discussion tended to center on the defendant's alleged obligation, either in terms of applicable law or in terms of factual evidence bearing

on the obligation, such as the fact that a bill had indeed been paid. The referee was not as active in these cases as in partial liability cases. One or both of the parties made arguments about obligations and either convinced the other or the case went to trial. For example, in the 67 percent of the no liability cases settled after the hearing, the plaintiff just abandoned the claim. The hearing usually made it clear that the plaintiff had no claim, but rather than admit it in person to the other party, the plaintiff asked for a few days to think things over and then withdrew the claim. The referee took a much more active role in partial liability cases, frequently becoming an accountant who requested bills and estimates of labor and who calculated charges in an attempt to straighten out the conflicting claims. It was apparent that many partial liability disputes resulted from bad bookkeeping and the failure of the parties to communicate on these matters. Partial liability cases that could not be settled tended to be ones where the plaintiff insisted that he or she had a legitimate claim to everything and refused to compromise (and the judge agreed with such plaintiffs 52 percent of the time).

Thus, these data suggest that the degree of admitted liability is a crucial determinant of whether an intermediate outcome will be achieved. While the referee's mediation activity was an essential catalyst for settlement in many instances, this activity was not entirely intrinsic to the mediation setting but instead reflected the degree of admitted liability. However, some questions remain. For example, 78 percent of adjudicated no liability cases and 69 percent of the partial liability cases resulted in all-or-none decisions. If case characteristics are so important, we might have expected the latter cases to result in a higher percentage of intermediate outcomes. Why didn't this happen? One explanation lies in the competing hypothesis that type of forum is important. Another explanation, however, lies in a slight elaboration of the admitted liability hypothesis: specifically, in some partial liability cases the disputed amount of the claim is all-or-none in character. For instance, a tenant acknowledged that he owed one month's rent of two that the landlord was claiming but disputed any obligation for the second month. In another case a defendant agreed to pay three-fourths of the damages arising from an automobile accident, but the dispute involved whether, under the law, the plaintiff's contributory negligence required that she assume the burden of the remaining one-fourth. Though these two disputes were correctly classified as partial

liability disputes—the defendant admitted some liability—at trial the issue before the judge was binary: which party was correct about liability for the disputed amount?

Now consider settlements. Fifty-eight percent of no liability and 27 percent of partial liability cases settled at the hearing produced all-or-none decisions. Seventy-two percent of no liability and 48 percent of partial liability cases settled after the hearing involved all-or-none decisions, but these latter figures are dominated by cases that the plaintiffs decided not to pursue. They did not involve further negotiations between the parties. The mediation hearing may well have been crucial to the plaintiff's decision not to pursue the claim, but such cases may be less like true settlements than like cases where plaintiffs unilaterally withdraw their claim after receiving legal advice that it is untenable. On the other hand, some of the no liability cases that were settled did involve intermediate outcomes (41 percent of those settled in the hearing and 19 percent of those settled after). How are these to be explained? One possible answer is that the cases were incorrectly classified; they were really partial liability cases. The observations of the hearings do not bear this explanation out, however. Sometimes compromise did take place as a result of pressures from the referee and desires by the parties themselves to end the matter as quickly as possible. Thus, there was a residual relationship between type of resolution forum and outcomes; sometimes mediation effected compromise. Nevertheless, the most striking findings are the large number of all-or-none outcomes among settled cases, at least when outcome is measured by the amount actually in dispute. Case characteristics may not explain everything, but they do explain a great deal.

I. Admitted Liability and Compliance to Outcome

It has also been suggested that the dynamics of mediation lead to greater rates of compliance than the dynamics of adjudication. In a phrase, compromise and consent create legitimacy and feelings of commitment, which in turn cause compliance. McEwen and Maiman (1984) report data consistent with this hypothesis. An alternative explanation is that disputes involving partial liability are more likely to be resolved through mediation and defendants in partial liability cases are more likely to pay since they are willing to concede that some money is owed the plaintiff. Hence, higher compliance rates in settled cases can be ascribed to the

admitted liability characteristics without reference to psychological commitments arising out of consensual processes. The data in Tables 3 and 4 show that no liability cases are more likely than partial liability cases to proceed to adjudication, a finding that is consistent with the "admitted liability" hypothesis. We now turn to the second part, namely, the relationship between admitted liability and compliance.

As a result of the settlement or trial outcome some money was owed to the plaintiff in 50 percent of the no liability cases and in 93 percent of the partial liability cases. From the follow-up interviews and the court records we were able to ascertain compliance rates in most of these cases. The cutoff period for data collection was six months after the case had been settled or adjudicated. Table 5 presents these data disaggregated by admitted liability and by type of resolution. The disaggregation yields sample sizes that are sometimes quite small. This means that the differences within the table, which we shall discuss, are ordinarily not statistically significant, but the pattern of results is, nevertheless, interesting.

Table 5. Defendant Compliance to Outcome as a Function of Admitted Liability and Resolution Setting

Variable/Liability	Resolution Setting*		
	Hearing	After Hearing	Trial
A. Some Amount Was Paid			
No Liability	100%	100%	48%
Partial Liability	93%	94%	84%
B. Portion Paid if Some Payment Made			
No Liability: Full amount	75%	100%	64%
Part amount	25%	0%	36%
	100%	100%	100%
Partial Liability: Full amount	89%	100%	71%
Part amount	11%	0%	29%
	100%	100%	100%
C. Mean Percent of Debt Paid			
No Liability	84%	100%	41%
Partial Liability	85%	100%	67%
D. Payment Motivation if Some Payment Made			
No Liability: Voluntary	75%	100%	57%
Coercion	25%	0%	43%
	100%	100%	100%
Partial Liability: Voluntary	90%	100%	50%
Coercion	10%	0%	50%
	100%	100%	100%

*Sample sizes: No Liability: Hearing = 8, After = 9, Trial = 29; Partial Liability: Hearing = 30, After = 17, Trial = 17.

Variable A simply asks whether some amount of monies owing was paid. Compliance rates were above 90 percent for partial liability cases settled in the hearing and after, and at 100 percent for no liability cases. For cases decided at trial, however, defendants in partial liability cases were almost twice as likely to have paid something as those in no liability cases. Variable B asks whether the full amount or some part of it was paid when at least something was paid. When some payment was made, the effect of liability type was small, although in cases settled at hearing or decided at trial defendants in partial liability cases were slightly more likely than no liability defendants to pay the full amount if they paid at all. Variable C measures compliance by assessing the mean percent of the debt that was paid. The primary differences are reflected in cases decided at trial. On average, defendants in partial liability cases paid 67 percent of their debts, whereas those in no liability cases paid only 41 percent of what was owing. This is almost entirely due to the fact that no liability defendants losing at trial were much less likely than partial liability defendants to pay anything.

Compliance was thus higher in cases that were settled than in cases that went to trial. This finding appears consistent with the consensus hypothesis, though it might be partly explained by other factors. When cases were settled in the hearing, the referee attempted in some cases to get the defendant to write out a check immediately, and in other cases the referee worked out a specific payment schedule. Our follow-up interviews also reveal that in cases settled either in or after the hearing a frequent explanation for prompt payment was that the defendant believed that failure to pay would mean further legal action. Thus, perceived threat of coercion rather than felt obligation may explain some of the high compliance rates in settled cases. Of cases that were decided at trial, compliance was substantially greater for those involving partial liability, a finding consistent with the admitted liability hypothesis.

The picture becomes murkier when we consider Variable D, the motivation conditions under which payment was made if there was some payment. Defendants may pay voluntarily or the plaintiff may coerce payment by wage garnishment, an execution against goods or property, or a judgment summons which theoretically could result in a brief jail sentence.[20]

[20] Of course, the plaintiff who receives no voluntary payment may take no action to collect. Attempts at coercion may also be unsuccessful if the defendant is unemployed or owns nothing of value against which an execution

Variable D shows that for cases that were settled, voluntariness was the norm. For cases decided at trial, however, the motivation behind payment was coercion in 43 percent of the no liability cases and 50 percent of the partial liability cases.

Because of the small sample sizes involved, these data on compliance must be considered tentative. They do, however, indicate that compliance is a complex phenomenon. Some compliance may, as McEwen and Maiman (1984) suggest, result from legitimation arising out of consensual processes inherent in mediation, and our data do not eliminate this possibility.[21] On the other hand, we can propose two additional sources of legitimation. Sometimes the motivation for defendants to pay arises from feelings of obligation that exist prior to the resolution hearing: the only issue is how much is to be paid. Another source of legitimation may arise in the hearing when the referee instructs defendants about legal norms; if the defendant becomes convinced that the law is on the side of the plaintiff, feelings of an obligation to comply may follow. The legitimacy of the obligation arises not from consent and compromise but rather from a new awareness of the law and its commands. Finally, some compliance can arise in the absence of any feelings of obligation on the part of the defendant, because the plaintiff coerces payment through legal mechanisms. Much more research on the problem of compliance is needed.

III. CONCLUSIONS AND IMPLICATIONS

The empirical results from our study of the Middlesex County Small Claims Court present a portrait of the court that is different on almost every dimension from that conveyed by previous research on small claims courts. Consumer issues take up a substantial portion of the court's disputed cases. Defendants, including consumer defendants, win as often as

---

can be made. But we are concerned here only with those cases where the plaintiff did receive money from the defendant.

[21] We have not provided a critical test of the competing explanations and the data are in a direction that is consistent with the McEwen and Maiman explanation. However, we should point out not only that the data are also consistent with our alternative explanation but that two of the key elements that those authors propose as important in the consensual process are often missing in the resolution hearings. First, the referee is often very legalistic and does not emphasize compromise and conciliation in obtaining a settlement (see note 22 and accompanying text). Second, when a settlement is reached, the parties seldom commit themselves to it in writing (as is the case in the Maine small claims courts). The referee just orally states the terms of the settlement, tells the parties that he will inform the judge of the terms, and terminates the hearing.

plaintiffs when we focus on the contested portion of plaintiff claims. While businesses tend to predominate as plaintiffs, in disputed cases they tend to be small businesses rather than large ones. "Repeat players" come out no better than "one shotters." Outcomes of settled cases differ from those of adjudicated cases, but these differences can be ascribed in large part to admitted liability characteristics of the disputes rather than to factors inherent in the mediation process. Socio-structural characteristics of the dispute are unrelated to settlement, but one social psychological characteristic, namely, the parties' perceptions of their opponents' reasonableness, is related. There is a difference between rates of compliance for settled and adjudicated cases that persists when we control for admitted liability, but the difference is apparently far greater in no liability cases than in partial liability ones.

The data with respect to defaulted claims are more tentative, but they too are controversial. Many writers have speculated that defaults result because defendants do not have the resources to fight plaintiffs, even though there are legitimate grounds for a dispute. The present research hints that, insofar as liability is concerned, plaintiffs in default cases often have clear-cut legal cases, and defendants may default for this reason or because they think that any judgment against them will be uncollectible.

There are several non-mutually exclusive explanations that might account for the differences between our conclusions and the conclusions of other researchers. The most likely involves our reconceptualization of disputes and dispute outcomes around the notion of admitted liability. This presents a different picture of who prevails and the extent of any triumph than that which one receives from coding a plaintiff's award as a plaintiff's victory or judging the parties' relative success by the percentage of the original claim awarded the plaintiff.

Another possible explanation involves the quality of the data. The studies by Sarat (1976), Ruhnka and Weller (1978), and Hildebrandt *et al.* (1982) used mail surveys, which produced low response rates (15 percent in Hildebrandt *et al.*) and a tendency for responses to come overwhelmingly from plaintiffs rather than defendants (though cf. Sarat, 1976). Furthermore, all previous small claims court studies have been based on post-litigation measures rather than on a combination of pre-litigation interviews, court observations, and post-litigation interviews. Retrospective data alone present well-recognized problems of recall and distortion. Finally, some of

the questions asked in the present research, such as those that probe business size and admitted liability, have not been asked in previous research.

A third explanation for the differences is that the procedures and clientele of small claims courts differ from jurisdiction to jurisdiction. Thus, the kinds of cases brought to the Middlesex County Small Claims Court may differ from those brought to small claims courts in Portland, Maine, or Chicago, Illinois, or some other jurisdiction.

One important feature of the Middlesex County court, which distinguishes it from most small claims courts that have been studied, is that virtually all cases are subject to a mediative type resolution hearing. The fact that admitted liability characteristics heavily influenced the likelihood of settlement does not mean that the third party was unimportant to the settlement process. While this study lacks a control group of cases that were not subject to resolution hearings, our observations suggest that the hearing was often an important catalyst for settlement. The referee's perspective on disputed facts or law and his occasional reminder of the additional cost and expense if the case went to trial often appeared to tip the balance in favor of settlement.[22]

The fact that the degree of admitted liability so strongly affects process and outcome has theoretical importance for comparing dispute processing paradigms. At an abstract level adjudication, arbitration, and mediation are very different procedures (e.g., Aubert, 1967; Eisenberg, 1976; Felstiner, 1974; Fuller, 1971; Thibaut and Walker, 1975). Yet recent research suggests that in practice these distinctions are often more apparent than real. Rohl (1983), for example, has concluded that settlement attempts in some West German courts are not really an alternative to adjudication but rather an abbreviated adjudicative procedure. Judges modify their activity as a function of their perception of case characteristics. Silbey and Merry (1982) have proposed that the nature of the problem shapes the process. They studied a court that uses both mediation and adjudication in an attempt to resolve a wide range of minor criminal, family, and civil disputes. They found

[22] Though it is not the purpose of this paper to explore referee behavior in any detail, it is worth mentioning that the referee frequently assumed a quasi-judicial role. Sometimes the referee sided wholly with one party on legal or factual grounds. In some instances unrepresented parties would refer to the referee as "Your Honor" or by other behaviors indicate that they believed the referee was a judge. Referees often did not correct such litigants, perhaps because the misimpression facilitated settlement.

that judges frequently attempt mediative solutions and that mediators frequently assume more power than their mandate calls for and render quasi-judicial decisions. The choice of tactics depends upon both the legal and non-legal dimensions of the dispute. Silbey and Merry's observations suggest the possibility that if there were no resolution hearing in the Middlesex County Small Claims Court, judges adjudicating partial liability cases but not no liability cases would have taken a more mediative stance and would have produced more intermediate outcomes. This is consistent with the data that show more intermediate outcomes in adjudicated partial liability cases than in adjudicated no liability cases, and it suggests that these observed differences would have been greater had all settled cases gone to adjudication. This suggestion also supports the hypothesis that mediated cases produce more intermediate outcomes than adjudicated cases for it suggests that intermediate outcomes in adjudicative cases often come where judges have taken a mediative stance. However, it diminishes the importance of the case processing procedure because it suggests that the mode of processing is both a function of admitted liability and, to the extent it affects outcomes, does so in large measure not independently but in interaction with the degree of admitted liability.[23]

Definitive evidence for the hypotheses that case characteristics dwarf procedures in their importance for outcomes or interact with them to determine outcomes would require an experimental test. Cases randomly assigned to adjudication would have to be compared to ones assigned to mediation or arbitration. The opportunity to conduct such a field experiment may be unlikely, but a series of field studies that use the admitted liability conceptualization of what is in dispute may provide a corpus of correlational evidence whose accumulated effect will be the same.

Finally, in concluding we should note that the present findings speak in an important and controversial way about the small claims court's role in the legal and political process. As Steele (1981) has observed, changing ideologies have played an

[23] These observations inevitably lead to speculation on Sarat's (1976) conclusions about the effect of arbitration procedures on small claims court outcomes. Sarat found differences between cases settled in arbitration and those settled by adjudication; he ascribed those differences to the contrasting decisional styles of arbitrators and judges. However, he did not consider case liability characteristics. A competing hypothesis for his results is that the cases selected for arbitration were more likely to involve partial liability and pseudo disputes while those selected for adjudication were more likely to involve no liability disputes and that these case differences affected outcomes.

important part in the history of the small claims court. The decade of the 1970s produced considerable criticism of the court. The ideological arguments appeared to be bolstered by empirical conclusions. As a result the court has been criticized as anti-defendant, anti-consumer, anti-little guy, and its adjudicative procedures have been viewed as less satisfactory than other possible resolution procedures. The present results suggest the possibility that, if the Middlesex County Small Claims Court is typical, such criticisms need to be substantially qualified.

REFERENCES

AUBERT, Vilhelm (1967) "Courts and Conflict Resolution," 11 *Journal of Conflict Resolution* 40.

BONN, Robert L. (1972) "The Predictability of Nonlegalistic Adjudication," 6 *Law & Society Review* 563.

COATES, Dan and Steven PENROD (1981) "Social Psychology and the Emergence of Disputes," 15 *Law & Society Review* 655.

EISENBERG, Melvin (1976) "Private Ordering Through Negotiation: Dispute Settlement and Rule Making," 89 *Harvard Law Review* 637.

FELSTINER, William L. F. (1974) "Influences of Social Organization on Dispute Processing," 9 *Law & Society Review* 63.

FULLER, Lon L. (1971) "Mediation—Its Forms and Functions," 44 *Southern California Law Review* 305.

GALANTER, Marc (1974) "Why the 'Haves' Come Out Ahead: Speculation on the Limits of Legal Change," 9 *Law & Society Review* 95.

——— (1975) "Afterword: Explaining Litigation," 9 *Law & Society Review* 347.

GULLIVER, Philip (1979) *Disputes and Negotiations: A Cross Cultural Perspective*. New York: Academic Press.

HILDEBRANDT, Kai, Brian McNEELY and Peter P. MERCER (1982) "The Windsor Small Claims Court: An Empirical Study of Plaintiffs and Their Attitudes," 2 *The Windsor Yearbook of Access to Justice* 87.

LEFF, Arthur (1970) "Injury, Ignorance and Spite—The Dynamics of Coercive Collection," 80 *Yale Law Journal* 1.

McEWEN, Craig and Richard MAIMAN (1981) "Small Claims Mediation in Maine: An Empirical Assessment," 33 *Maine Law Review* 237.

——— (1982) "Arbitration and Mediation as Alternatives to Court," 10 *Policy Studies Journal* 712.

——— (1984) "Mediation in Small Claims Court: Achieving Compliance Through Consent," 18 *Law & Society Review* 11.

McINTYRE, Mary Ellen (1979) "Consumers and the Small Claims Courts." Unpublished M.A. Thesis, Faculty of Graduate Studies, The University of Guelph, Ontario.

MILLER, Richard and Austin SARAT (1981) "Grievances, Claims, and Disputes: Assessing the Adversary Culture," 15 *Law & Society Review* 525.

ROHL, Klaus (1983) "The Judge as Mediator." Working Paper 1983-9, Disputes Processing Research Program, University of Wisconsin Law School, Madison, Wisconsin.

RUHNKA, John and Steven WELLER (1978) *Small Claims Courts: A National Examination*. Williamsburg, VA: National Center for State Courts.

SARAT, Austin (1976) "Alternatives in Dispute Processing: Litigation in a Small Claims Court," 10 *Law & Society Review* 339.

SILBEY, Susan and Sally MERRY (1982) "The Problems Shape the Process: Managing Disputes in Mediation and Court." Paper presented at the Law and Society Meetings, Toronto, Canada.

STEELE, Eric (1981) "The Historical Context of Small Claims Courts," 1981 *American Bar Foundation Research Journal* 295.

THIBAUT, John and Laurens WALKER (1975) *Procedural Justice*. Hillsdale, NJ: Lawrence Erlbaum.

TRUBEK, David, Austin SARAT, William FELSTINER, Herbert KRITZER and Joel GROSSMAN (1983) "The Costs of Ordinary Litigation." Working Paper 1983-5, Disputes Processing Research Program, University of Wisconsin Law School, Madison.

VIDMAR, Neil (1981a) "Justice Motives and Other Psychological Factors in the Development and Resolution of Disputes," in M. Lerner and S. Lerner (eds.), *The Justice Motive in Social Behavior*. New York: Plenum.

——— (1981b) "Observations on Dispute Dynamics and Resolution Hearing Outcomes in a Small Claims Court," in S. Lloyd-Bostock (ed.), *Law and Psychology*. Oxford: Oxford University Centre for Socio-legal Studies.

VIDMAR, Neil and Judith SHORT (1984) "Social Psychological Dynamics in the Settlement of Small Claims Court Cases," in D. J. Muller, D. E. Blackman and A. J. Chapman (eds.), *Psychology and Law*. London: John Wiley & Sons.

YNGVESSON, Barbara and Patricia HENNESSEY (1975) "Small Claims, Complex Disputes: A Review of the Small Claims Literature," 9 *Law & Society Review* 219.